

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MONICA SPEARS, Personal Representative
for the ESTATE OF STEVEN TIMOTHY
SPEARS, deceased,

Plaintiff,

vs.

SHELBY TOWNSHIP, a municipal corporation
OFFICER DENNIS WASHBURN, OFFICER
DANIEL MESSING, OFFICER ANDRE
GAMMICCHIA, OFFICER ROBERT HEISLER,
OFFICER PAUL SORBO, individually, and
in their official capacity, jointly and severally,

Defendants.

Case: 2:07-cv-14887
Judge: Hood, Denise Page
Referral MJ: Scheer, Donald A
Filed: 11-14-2007 At 01:04 PM
MONICA SPEARS, ET AL V. SHELBY TOWN
SHIP, ET AL (KB)

GEOFFREY NELS FIEGER (P30441)
PAUL W. BROSCAY (P36267)
FIEGER, FIEGER, KENNEY, JOHNSON & GIROUX
Attorneys for Plaintiff
19390 W. Ten Mile Road
Southfield, MI 48075
(248) 355-5555
p.broschay@fiegerlaw.com

COMPLAINT AND JURY DEMAND

NOW COMES the Plaintiff, MONICA SPEARS, Personal Representative for the
ESTATE OF STEVEN TIMOTHY SPEARS, deceased, by and through their attorneys,
FIEGER, FIEGER, KENNEY, JOHNSON & GIROUX, P.C., and for her Complaint and Jury
Demand against the above-named Defendants, states as follows:

1. Monica Spears is the Personal Representative of the Estate of Steven
Timothy Spears, deceased, and qualifies in the Courts as the personal representative, and is

authorized and the proper party to bring this action on behalf of and for the benefit of the Estate of Steven Timothy Spears.

2. At all relevant times to this litigation, the deceased, Steven Timothy Spears, was a resident of the Township of Shelby in the County of Macomb, State of Michigan.

3. At all relevant times to this litigation, the Defendant Shelby Township was a municipal corporation duly organized and carrying on governmental functions in the State of Michigan.

4. At all relevant times to this litigation, the Defendants, OFFICER DENNIS WASHBURN, OFFICER DANIEL MESSING, OFFICER ANDRE GAMMICCHIA, OFFICER ROBERT HEISLER AND OFFICER PAUL SORBO, were employees of the Defendant Shelby Township Police Department and were acting under color of state law and were acting in the course and scope of their employment with the Defendant Township.

5. The amount in controversy exceeds SEVENTY-FIVE THOUSAND DOLLARS (\$75,000).

6. The Defendants are not entitled to qualified immunity.

7. On August 3, 2007, at approximately 11:23, the Defendants Messing and Washburn responded to a radio run to the area of Shelby and 22 Mile Road in Shelby Township concerning a reported indecent exposure.

8. As the officers arrived at the area of 23 Mile and Stoneridge in Shelby Township they observed a man later identified as the deceased, Steven Timothy Spears, standing on Stoneridge Road just south of 23 Mile Road.

9. The man identified himself and told the Defendant Officers that he lived

nearby. The officers obtained his true name and address from their communications section.

10. The Defendant officers observed that Spears was wearing only underwear and was sweating heavily. The Defendant officers interviewed Spears further and he claimed that he was diabetic. The officers in response to his explanation ordered EMS which eventually arrived on the scene.

11. The Defendant Gammicchia arrived on the scene in response to a call for back up from Messing and Washburn. The Defendant officers Heisler and Sorbo arrived at the scene a short time later.

12. Spears did not cooperate with the officers and EMS responders' request that he submit to a test to determine his blood sugar level.

13. The Defendant Washburn drew his taser from the holster and order Spears to cooperate with the EMS personnel or he would be handcuffed and arrested. Spears then fled from the Defendant officers and EMS personnel. The Defendant Washburn activated his taser and struck Spears as he was running. Spears fell to the ground and then ran again. Washburn again activated the taser causing Spears to fall to the ground, violently striking his head.

14. While Spears was on the ground vastly outnumbered by five able bodied police officers he was ordered to "get on your stomach" by the Defendants.

15. While Spears was on the ground defenseless against all the Defendants he was assaulted and beaten.

16. While Spears was on the ground defenseless against all the Defendants he

was continuously assaulted by the Defendants Washburn and Messing who activated their tasers in a drive stun mode simply because Spears refused to turn from his back onto his stomach where he would be at a greater risk from the officers.

17. Spears was rolled onto his stomach and handcuffed behind his back by the Defendants while still being shocked. A blood test was accomplished by EMS personnel who determined that Spears had "low blood sugar."

18. The Defendant officers forced the deceased to remain prone on the ground with his head, face and mouth in the dirt of the shoulder of the road while on his chest and stomach with his hands cuffed behind his back while applying weight against his body with their hands, arms and legs.

19. The Defendants each in some way restrained the deceased while he was forced to lay naked in a supine position with handcuffs securing his hands behind his back.

20. The Defendants continued to restrain the deceased while he attempted to reposition himself so he could breathe, but the Defendants refused to permit it.

21. The Defendants responded to the deceased's attempts to save his life and get up from the ground by restraining him and refusing him the opportunity to breathe.

22. The restraint by the Defendants in the manner described, as well as the shocks from the tasers and the beating, caused the deceased to lose consciousness and die.

23. The restraint of the deceased in the manner carried out by the Defendants is well known to law enforcement officers as a tactic that will cause positional or mechanical asphyxia and death.

24. The brutal attack on the helpless Spears by the Defendant officers was a

proximate cause of his death.

25. While the Defendant officers assaulted Spears who they knew had no weapons and was not a threat to any of them he became unresponsive and died.

26. At no time during the brutal killing of Timothy Spears did the above Defendants have a justifiable reason to use the force they employed.

COUNT I

**VIOLATION OF CIVIL RIGHTS PURSUANT TO 42 U.S.C. §1983
BY INDIVIDUAL DEFENDANTS**

27. The Plaintiffs repeat and reallege paragraphs 1 through 26 of their Complaint as though fully set forth herein.

28. The above-described killing of an innocent citizen was without legal justification.

29. Pursuant to 42 U.S.C. §1983 and the Fourth and Fourteenth Amendments to the United States Constitution, the Defendants owed Steven Timothy Spears, a duty to act prudently and with reasonable care and to otherwise avoid the use of unnecessary, unreasonable, excessive and/or deadly force.

30. The Defendants violated Steven Timothy Spears' right to be free from punishment and deprivation of life and liberty without due process of law under the Fourth and Fourteenth Amendments to the United States Constitution and to be free from deliberate indifference to all of said rights by unjustifiably killing him.

31. After employing unnecessary unreasonable excessive and deadly force

resulting in a violation of Steven Timothy Spears' rights under 42 U.S.C. 1983 the Defendants along with other officers employed by the Defendant Shelby Township failed to timely render and/or seek medical care or assistance for Steven Timothy Spears.

32. The Defendant officers conspired with one another to deprive Steven Timothy Spears of needed medical care, and fabricated and disseminated false accounts regarding the subject matter of this lawsuit, namely, the use of unnecessary deadly force against Steven Timothy Spears.

33. The Defendant officers and others from the Defendant Shelby Township and Township administration did knowingly falsely and publicly state that the Defendant officers and others were in a dangerous situation and/or were justified in using the type of force they did.

34. Statements made by the Defendant officers in the record and/or publicly that represented the deceased, Steven Timothy Spears to be at fault for his death or for threatening the Defendant officers were voiced and announced prior to completion of a complete and objective investigation as required.

35. As a direct and proximate result of the Defendants' actions, their deliberate indifference as more fully described above, the Steven Timothy Spears, suffered damages.

36. As a direct and proximate result of the Defendants' acts and/or omissions, Steven Timothy Spears died, and thus, his estate, via its personal representative, has and will continue to suffer damage into the future, including but not limited to:

- a. Reasonable medical, hospital, funeral and burial expenses;
- b. Reasonable compensation for the pain and suffering undergone by

Steven Timothy Spears while he was conscious during the time between his injury and death;

- c. Loss of financial support;
- d. Loss of service;
- e. Loss of gifts and/or other valuable gratuities;
- f. Loss of society and companionship;
- g. Punitive and exemplary damages; and
- h. All other damages properly recoverable under the Michigan Wrongful Death Act.

WHEREFORE, Plaintiff, MONICA SPEARS, Personal Representative of the ESTATE OF STEVEN TIMOTHY SPEARS, deceased, respectfully request this Honorable Court enter a judgment in her favor against Defendants and award an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars, exclusive of costs, interest and attorney fees, as well as an award of punitive damages.

COUNT II

VIOLATION OF CIVIL RIGHTS PURSUANT TO 42 U.S.C. 1983 BY SHELBY TOWNSHIP

37. The Plaintiffs repeat and reallege paragraphs 1 through 36 of their Complaint as though fully set forth herein.
38. At all times relevant to this Complaint, Shelby Township, through its Police Department, and through its senior officers and policymakers, supervisors and other

policymakers, pursued policies, practices and customs that were a direct and proximate cause of the unconstitutional rights alleged herein and were the result of deliberate indifference.

39. The policies include, but are not limited to:

- a. Failure to properly screen, supervise, discipline, transfer, counsel or otherwise control police officers, including the officers who killed Steven Timothy Spears, who are known or should have been known to engage in improper use of excessive force and deadly force;
- b. Employing a police code of silence wherein other officers and supervisors cover up the use of deadly force by fabricating accounts in official police reports and internal affairs investigations to the media, all of which are designed to falsely exonerate officers from potential civil liability;
- c. Creating and implementing procedures that allow for and promote the use of deadly force in unwarranted and under unjustified circumstances;
- d. Failing to train its police officers concerning the dangers of restraining persons and the dangers of the use of tasers; and
- e. Failing to train its police officers concerning the dangers of positional and compression asphyxia;
- f. Other failures yet to be discovered.

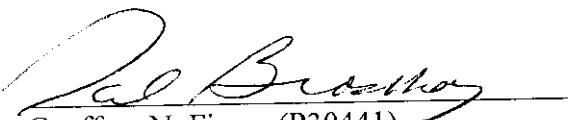
40. As a direct and proximate result of the Defendants' actions, their deliberate indifference as more fully described above, the Steven Timothy Spears, suffered damages.

41. As a direct and proximate result of the Defendants' acts and/or omissions, Steven Timothy Spears died, and thus, his estate, via its personal representative, has and will continue to suffer damage into the future, including but not limited to:

- FIEGER, FIEGER, KENNEY, JOHNSON & GIROUX • A PROFESSIONAL CORPORATION • ATTORNEYS AND CONSULTORS AT LAW • 19390 WEST TEN MILE ROAD • SUITE 2480, MICHIGAN 48073 • TEL 248/355-5555 • FAX 248/355-5555
- a. Reasonable medical, hospital, funeral and burial expenses;
 - b. Reasonable compensation for the pain and suffering undergone by Steven Timothy Spears while he was conscious during the time between his injury and death;
 - c. Loss of financial support;
 - d. Loss of service;
 - e. Loss of gifts and/or other valuable gratuities;
 - f. Loss of society and companionship;
 - g. Punitive and exemplary damages; and
 - h. All other damages properly recoverable under the Michigan Wrongful Death Act.

WHEREFORE, Plaintiff, MONICA SPEARS, Personal Representative of the ESTATE OF STEVEN TIMOTHY SPEARS, deceased, respectfully request this Honorable Court enter a judgment in her favor against Defendants and award an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars, exclusive of costs, interest and attorney fees, as well as an award of punitive damages.

Respectfully submitted,



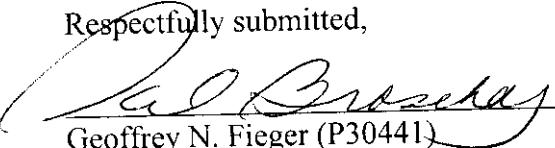
Geoffrey N. Fieger (P30441)
Paul W. Broschay (P36267)
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19390 W. Ten Mile Road
Southfield, MI 48075
(248) 355-5555
p.broschay@fiegerlaw.com

Dated: November 14, 20007

JURY DEMAND

NOW COMES the Plaintiff, MONICA SPEARS, Personal Representative of the Estate of STEVEN TIMOTHY SPEARS, deceased, by and through their attorneys, FIEGER, FIEGER, KENNEY, JOHNSON & GIROUX, P.C., and hereby demand a trial by jury in the above-captioned matter.

Respectfully submitted,


Geoffrey N. Fieger (P30441)
Paul W. Broschay (P36267)
FIEGER, FIEGER, KENNEY, JOHNSON & GIROUX, P.C.
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Southfield, MI 48075
(248) 355-5555
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Dated: November 14, 2007

CIVIL COVER SHEET County in which this action arose Macomb County

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Monica Spears, Personal Representative of the Estate of Steven Timothy Spears,

(b) County of Residence of First Listed Plaintiff Macomb County

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Shelby Township, a municipal corporation, Officer Dennis Washington, Officer Daniel Messing, Officer Andre Gammiechia, Officer Robert Heisler, Officer Paul Sorbo, individually and in their individual capacity, jointly and severally,
County of Residence of First Listed Defendant Macomb County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Paul W. Broschay (P36267), 19390 W. Ten Mile Road, Southfield, MI 48075 (248)
355-5555

II. BASIS OF JURISDICTION (Select One Box Only)

 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Select One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input checked="" type="checkbox"/> PTF	<input type="checkbox"/> DEF	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF	<input checked="" type="checkbox"/> DEF
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Select One Box Only)

CONTRACT	TORTS
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury
<input type="checkbox"/> 195 Contract Product Liability	
<input type="checkbox"/> 196 Franchise	
REAL PROPERTY	CIVIL RIGHTS
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other
	<input type="checkbox"/> 440 Other Civil Rights
	PRIORITIZED PETITIONS
	<input type="checkbox"/> 510 Motions to Vacate Sentence
	Habeas Corpus:
	<input type="checkbox"/> 530 General
	<input type="checkbox"/> 535 Death Penalty
	<input type="checkbox"/> 540 Mandamus & Other
	<input type="checkbox"/> 550 Civil Rights
	<input type="checkbox"/> 555 Prison Condition

Case: 2:07-cv-14887

Judge: Hood, Denise Page

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MONICA SPEARS, ET AL V. SHELBY TOWNSHIP, ET AL (KB)

 640 R.R. & H.W. 650 Airline Regs. 660 Occupational Safety/Health 690 Other 830 Patent 840 Trademark

LABOR

 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation 791 Empl. Ret. Inc.

Security Act

SOCIAL SECURITY

 861 HIA (1395ft) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g))

FEDERAL TAX SUITS

 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party

26 USC 7609

OTHER STATUTES

 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 810 Selective Service 850 Securities/Commodities/ Exchange 875 Customer Challenge

12 USC 3410

 890 Other Statutory Actions 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Access to Justice 950 Constitutionality of State Statutes

V. ORIGIN

(Select One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstituted or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. 1983

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

 Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

November 14, 2007

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD



RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
